IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 175 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JJJJ

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following two questions of law have been referred to this court for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

1. Whether the Appellate Tribunal has been right in law in holding that capital gains is taxable in the hands of the trust and not in the hands of the assessee individual on the facts and in the circumstances of the case?

2 Whether the Tribunal has been right in law in holding that depreciation in the value of shares of Sayaji Mills Ltd. at Rs. 108.75 is required to be taken into consideration while computing capital gains or loss arising out of the sale of shares of Rajesh Textile Mills Ltd.?

2. We have heard learned counsel Shri Akil Qureshi appearing for the revenue. Though the respondent-assessee has been served, nobody appears for the respondent.

3. It has been submitted by learned advocate Shri Qureshi that the questions which have been referred to this court are no longer res integra. These questions have already been answered by this court in earlier cases.

4. So far as the first question is concerned, it is about taxability of income arising from capital gains in the hands of trustees. The question is whether the shares which are held by the trust, upon its sale, capital gains can be taxed in the hands of the trust or the beneficiary. It has been held in case of Kum. Pallavi S. Mayor v. CIT, Gujarat, 127 ITR 701 that, in such an event, the amount of capital gains should be taxed in the hands of the trust and not in the hands of the beneficiary. We are in respectful agreement with the ratio of the said judgment and, accordingly, we answer the first question in favour of the assessee and against the revenue.

5. Facts with regard to the second question are as

under: The assessee was having shares of Sayaji Mills Ltd. Sayaji Mills Ltd. had issued right shares of Rajesh Textile mills Ltd. Upon sale of shares of Rajesh Textile Mills Ltd. the assessee had earned capital gains, but, at the same time, it had suffered loss on account of depreciation in the value of the shares of Sayaji Mills Ltd. It has been held by this court in the case of Suhas Vadilal vs. CIT, ITR No. 420/83 that from the capital gains so earned, the value of depreciation in respect of shares of the company issuing right shares is to be deducted.

6. In the circumstances, following the ratio laid down in the judgment referred to hereinabove, we answer question No. 2 in favour of the assessee and against the revenue.

Thus, both the questions are answered in favour of the assessee and against the revenue. The reference stands disposed of with no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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